

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PHYLLIS WEHLAGE, on behalf of herself
and on behalf of others similarly
situated,

Plaintiff,

v.

EMPRES HEALTHCARE, INC; EHC
MANAGEMENT, LLC; EHC FINANCIAL
SERVICES, LLC; EVERGREEN CALIFORNIA
HEALTHCARE, LLC; EVERGREEN AT ARVIN,
LLC; EVERGREEN AT BAKERSFIELD, LLC;
EVERGREEN AT LAKEPORT, LLC; EVERGREEN
AT HEARTWOOD, LLC; EVERGREEN AT
SPRINGS ROAD, LLC; EVERGREEN AT
TRACY, LLC; EVERGREEN AT OROVILLE,
LLC; EVERGREEN AT PETALUMA, LLC; and
EVERGREEN AT GRIDLEY (SNF), LLC;

Defendant.

No. C 10-05839 CW

ORDER GRANTING
ADMINISTRATIVE
MOTIONS FOR
APPOINTMENT OF
ISABEL S.
SIMENTAL COLLIER
AND MARILYN J.
STARTS AS
GUARDIANS AD
LITEM
(Docket No. 52 &
53)

Pursuant to Federal Rule of Civil Procedure Rule 17(c),
Plaintiffs move for the appointment of Marilyn J. Starts as
guardian ad litem for Plaintiff Howard Richard Starts, Docket No.
52, and the appointment of Isabel S. Simental-Collier, as guardian
ad litem of Plaintiff Maria Hernandez, Docket No. 53. Defendants
do not oppose the motion. Having considered the submissions, the
Court GRANTS the motions.

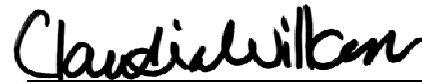
1 Under Rule 17(c)(2), "[a] minor or an incompetent person who
2 does not have a duly appointed representative may sue by next
3 friend or by a guardian ad litem." Fed. R. Civ. P. 17(c)(2). Rule
4 17(c)(2) further states, "The court must appoint a guardian ad
5 litem-or issue another appropriate order--to protect a minor or
6 incompetent person who is unrepresented in an action." Fed. R.
7 Civ. P. 17(c)(2). An application for appointment of a guardian ad
8 litem is not guided by state law, but rather the protection of the
9 individual's interests." Estate of Ricardo Escobedo v. City of
10 Redwood City, 2006 U.S. Dist. LEXIS 12457, *21-22 (N.D. Cal.); 6A
11 Charles Alan Wright & Arthur R. Miller & Mary Kay Kane, Federal
12 Practice and Procedure § 1571 at 511-12 (1991).

13 Here Plaintiffs Maria Hernandez and Howard Richard Starts are
14 intended class representatives in this action. Plaintiffs' counsel
15 represent that no previous petitions for appointment of a guardian
16 ad litem for Maria Hernandez or Howard Richard Starts have been
17 filed in this matter. In addition, counsel state that no conflict
18 of interest exists between Marilyn Starts and her husband, Howard
19 Richard Starts. Nor does a conflict exist between Isabel S.
20 Simental-Collier and her grandmother Maria Hernandez. The
21 supporting declarations make clear that both Plaintiffs Hernandez
22 and Starts lack capacity due to impairments in their alertness and
23 attention, their ability to process information and other factors
24 necessary for both to fully appreciate the rights, duties and
25 responsibilities created by their participation in this lawsuit.
26 Marilyn Starts and Isabel Simental-Collier are willing to serve as
27 guardians ad litem, and to visit their respective relative

1 regularly and are able to identify and address their needs.
2 Accordingly, the Court finds that it is in the best interest of
3 Plaintiffs to grant the motions, and, therefore, appoints Isabel
4 Simental-Collier as guardian ad litem of Maria Hernandez, and
5 Marilyn Starts as guardian ad litem for Howard Richard Starts.

6 IT IS SO ORDERED.

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9 Dated: 6/23/2011



CLAUDIA WILKEN
United States District Judge